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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 v.

13 CHARLES EDWARD LEPP, et. al
14 Defendants.
15

Case No. CR 05 00317 MHP

DEFENDANT'S REQUEST FOR RULING
ON MOTIONS; SUPPLEMENTAL
POINTS AND AUTHORITIES

Date: May 30, 2007
Time: 9:30 a.m.
Courtroom: Hon. Marilyn Hall Patel

16 _____/
17 TO: SCOTT N. SCHOOLS, UNITED STATES ATTORNEY, ASSISTANT UNITED
STATES ATTORNEY C. DAVID HALL AND THE CLERK OF THE COURT:

18 Defendant CHARLES EDWARD LEPP, by and through his counsel Michael L.

19 Hinckley, herein request the Court consider the attached Supplemental Points and Authorities in
20 ruling on the previously filed and argued motions held in abeyance by the Court pending the
21 Supreme Court's ruling in *Ashcroft v. Raich*.

22 DATED:

Respectfully submitted,

23
24 STIGLICH & HINCKLEY, LLP

25 /S/

26 _____
27 MICHAEL L. HINCKLEY
Attorneys for Defendant
28 CHARLES EDWARD LEPP

MEMORANDUM OF POINTS AND AUTHORITIES

In a written Memorandum & Order dated February 8, 2005, this Court held that Reverend Eddy Lepp's remaining jurisdictional motions be held in abeyance pending the Supreme Court's ruling in *Ashcroft v. Raich*, 124 S.Ct. 2902, (2004).

The Supreme Court has since issued its decision in *Gonzales v. Raich*, 125 S.Ct. 2195 (2005), vacating and remanding the Ninth Circuit ruling in *Raich v. Ashcroft*, 353 F.3d 1222 (9th Cir. 2003).

Specifically, the Supreme Court disagreed with the Ninth Circuit’s favorable ruling on Raich’s claim that application of the Controlled Substance Act (“CSA”) to persons growing, possessing, and/or using marijuana for medical purposes in a manner authorized under state law violates the commerce clause. Relying heavily on *Wickard v. Filburn*, 317 U.S. 111 (1942), the Supreme Court held application of the CSA to individuals such as Raich, was constitutional and did not violate the commerce clause.

The defense, of course, acknowledges *Gonzales v. Raich* is binding authority and, as such, will submit on the issue, save the following points: (1) the defense believes *Gonzales v. Raich* was wrongly decided and wishes to preserve the issue for potential subsequent review; (2) the defense wishes to include in the at-issue motions the charges added via Superseding Indictment subsequent to the filing of Mr. Lepp's initial brief and hearing; and (3) note that the factual characteristics analyzed in Raich's cases, while analogous to the case at bench, did not include an analysis of the application of the CSA to persons, like Reverend Lepp, who contend that they manufacture, possess, and use marijuana for religious purposes. The defense recognizes that Reverend Lepp's rights in this regard are specifically protected, and more appropriately addressed via the Religious Freedom Restoration Act [RFRA] defense which Reverend Lepp intends to present at trial.

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CONCLUSION

For the foregoing reasons, with the Supplemental Points and Authorities filed herein,
Reverend Lepp hereby submits the previously filed jurisdictional motions and requests a ruling.

DATED:

Respectfully submitted,

STIGLICH & HINCKLEY, LLP

/S/

MICHAEL L. HINCKLEY
Attorneys for Defendant
CHARLES EDWARD LEPP

PROOF OF SERVICE

I, the undersigned say:

I am over eighteen years of age and not a party to the above action. My business address is 1306 Pine Street, Walnut Creek, California 94596.

I personally caused to be served a copy of the attached on the following:

Dave Hall
Assistant United States Attorney
450 Golden Gate, 11th Floor
San Francisco, CA 94102
(415) 436-7234

Harris B. Taback
345 Franklin Street, Suite 102
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed on 4/30/07, at Walnut Creek, California.

/S/

Michael L. Hinckley